

STATE OF MICHIGAN
COURT OF APPEALS

STATNEY BATES, JR.,

Plaintiff-Counterdefendant-
Appellee,

v

ODESTER MANNING BATES,

Defendant-Counterplaintiff-
Appellant.

UNPUBLISHED
September 19, 2006

No. 261801
Macomb Circuit Court
LC No. 03-002769-DO

Before: Davis, P.J., and Murphy and Schuette, JJ.

MEMORANDUM.

Defendant appeals as of right a divorce judgment based on an arbitration award. We vacate the arbitration award and the judgment of divorce and remand for further proceedings.

Defendant argues that the divorce judgment should be set aside because the trial court failed to comply with the requirements of Michigan's Domestic Relations Arbitration Act (DRAA), 600.5070 *et seq.* We agree.

"To keep faith with the Legislature's intent, courts . . . must proceed in full compliance with the DRAA." *Miller v Miller*, 264 Mich App 497, 507; 691 NW2d 788 (2004), rev'd on other grounds 474 Mich 27; 707 NW2d 341 (2005). MCL 600.5072(1) provides:

The court *shall not* order a party to participate in arbitration unless each party to the domestic relations matter acknowledges, in writing or on the record, that he or she has been informed in plain language of all of the following
[Emphasis added.]

The statute proceeds to list nine arbitration principles and rules that are to be communicated to and acknowledged by the parties. Our Supreme Court in *Harvey v Harvey*, 470 Mich 186, 189; 680 NW2d 835 (2004), noted that MCL 600.5072 "contains numerous protections for [parties], including *mandatory* prearbitration disclosures and detailed procedural *requirements*." (Emphasis added.) The lower court file is devoid of any writing or record transcript indicating that defendant acknowledged being informed of the arbitration principles and rules set forth in MCL 600.5072(1) as mandated by the Legislature. Accordingly, the trial court was precluded by statute from referring the case to arbitration.

We vacate the arbitration award and the divorce judgment and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Alton T. Davis

/s/ William B. Murphy

/s/ Bill Schuette